

## Internal Revenue Service

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

In Re:

Refer Reply To:  
CC:PSI:B04  
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Date:  
August 07, 2007

### Legend:

|                 |   |
|-----------------|---|
| Taxpayer 1      | = |
| Taxpayer 2      | = |
| Trust 1         | = |
| Trust 2         | = |
| Partnership     | = |
| Accounting Firm | = |
| Year 1          | = |
| Year 2          | = |
| X               | = |
| Y               | = |

Dear \_\_\_\_\_ :

This is in response to a letter dated April 3, 2007, submitted by your personal representative, and subsequent correspondence, requesting rulings under §§ 2601 and 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and the representations made are as follows. The following events occurred in Year 1. Taxpayer 1 and Taxpayer 2 were married and had a son and a daughter. Taxpayer 1 and Taxpayer 2 formed Partnership. Taxpayer 1 and Taxpayer 2 were Partnership's sole general and limited partners. Partnership was funded with cash and marketable securities.

Taxpayer 1 established Trust 1 for the benefit of the couple's daughter, and Taxpayer 2 established Trust 2 for the benefit of the couple's son. Taxpayer 1 transferred an X percent limited partnership interest in Partnership to Trust 1 and Taxpayer 2 transferred an X percent limited partnership interest in Partnership to Trust 2.

Taxpayer 1 and Taxpayer 2 retained Accounting Firm to value the interests transferred to Trust 1 and Trust 2. Accounting Firm determined that a valuation discount of Y percent should be applied in determining the value of the transferred interests for Federal gift tax purposes.

Taxpayer 1 and Taxpayer 2 retained Accounting Firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting their gifts to Trust 1 and Trust 2. In preparing their Forms 709, Accounting Firm inadvertently failed to allocate or failed to advise Taxpayer 1 and Taxpayer 2 to allocate their respective generation-skipping transfer (GST) exemptions to their gifts to Trust 1 and Trust 2.

In Year 2, Taxpayer 1 retained a law firm for estate planning advice. The law firm discovered the failure to allocate GST exemption to the Year 1 gifts to Trust 1 and Trust 2.

Taxpayer 1 and Taxpayer 2 are requesting an extension of time pursuant to §§ 2642(g), 301.9100-1, and 301.9100-3, to allocate their respective GST exemptions to the Year 1 transfers to Trust 1 and Trust 2, and that the GST exemptions allocated to the transfers will be effective as of the date of each transfer.

#### Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 26.2601-1(a)(1) of the Generation-Skipping Transfer Tax Regulations provides that, except as otherwise provided, the provisions of chapter 13 apply to any GST (as defined in § 2611) made after October 22, 1986.

Section 26.2601-1(a)(2) provides that, solely for purposes of chapter 13, an inter vivos transfer is treated as if it were made on October 23, 1986, if it was (i) subject to chapter 12 (regardless of whether a tax was actually incurred or paid); and (ii) made after September 25, 1985, but before October 23, 1986. For purposes of this paragraph, the value of the property transferred shall be the value of the property on the date the property was transferred.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) (in effect at the time of the transfer) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of

\$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP, and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust

as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have not been satisfied. Therefore, the requested relief is denied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: